

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

VOIP-PAL.COM, INC.,

Plaintiff,

v.

APPLE INC,

Defendant.

Case No. 18-CV-06216-LHK

**ORDER DENYING ADMINISTRATIVE
MOTION FOR LEAVE TO FILE
SUPPLEMENTAL BRIEF**

Re: Dkt. No. 74

VOIP-PAL.COM, INC.,

Plaintiff,

v.

AMAZON.COM, INC, and AMAZON
TECHNOLOGIES, INC.

Defendants.

Case No. 18-CV-07020-LHK

On June 5, 2019, Defendants Apple Inc., Amazon.com, Inc., and Amazon Technologies, Inc. (collectively, “Defendants”) filed consolidated motions to dismiss the instant case based upon 35 U.S.C. § 101. ECF No. 67¹; Case No. 18-CV-06216, ECF No. 89 (collectively, “Def. Cons.

¹ All references to the docket refer to Case No. 5:18-CV-07020 unless otherwise specified.

Mot. to Dismiss”). The motion has been fully briefed since the end of June: Plaintiff VoIP-Pal.com, Inc. (“Plaintiff”) filed a consolidated opposition on June 20, 2019, ECF No. 69, and Defendants replied on June 26, 2019, ECF No. 70. The hearing on the motion to dismiss was scheduled for September 5, 2019.

Then, on August 26, 2019, Plaintiff filed a motion for leave to file a supplemental brief in further opposition to Defendants’ consolidated motion to dismiss. ECF No. 74 (“Mot. for Leave”). Defendants opposed the motion. ECF. No. 75. For the following reasons, the Court DENIES the motion for leave to file a supplemental brief.

Plaintiff contends that “[g]ood cause exists for granting this motion because VoIP-Pal has discovered information material to the resolution of Defendants [sic] Motion to Dismiss.” Mot. for Leave at 2. Specifically, Plaintiff claims that Defendant Apple Inc. “took positions and made arguments” in four petitions for *inter partes* review before the United States Patent and Trademark Office (“USPTO”) that are “inconsistent and contradictory to what Apple has argued to this Court in its Motion to Dismiss.” *Id.* at 3.

Yet, as Plaintiff admits, Apple Inc. filed the petitions for *inter partes* review on May 13, 2019, which was more than one month before Plaintiff filed its consolidated opposition on June 20, 2019.² Mot. for Leave at 2. Even though Plaintiff’s supplemental brief is based on information to which Plaintiff had access since May 2019, Plaintiff waited more than three months to file its motion for leave on August 26, 2019—10 days before the scheduled hearing on the motion to dismiss.

Plaintiff contends that it only “discovered” Apple Inc.’s arguments in the May 13, 2019 petitions for *inter partes* review on August 23, 2019, the day Plaintiff’s responses to the petitions

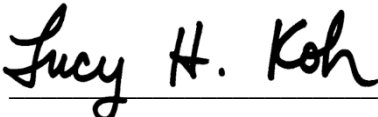
² Even if Plaintiff were to claim that its supplemental brief responds to alleged “new evidence” in Defendants’ June 26, 2019 reply, Plaintiff was required to file an Objection to Reply Evidence within 7 days after Defendants filed their reply. *See* Civil L.R. 7-3(d)(1) (“If new evidence has been submitted in the reply, the opposing party may file an Objection to Reply Evidence . . . not more than 7 days after the reply was filed.”). Here, 7 days after Defendants filed the reply was July 3, 2019. Plaintiff has no excuse for waiting until August 26, 2019 to file its supplemental brief.

1 were due. Mot. for Leave at 3. However, the parties describe Apple Inc.'s May 13, 2019 petitions
2 for *inter partes* review in their May 15, 2019 joint case management statement. ECF No. 58.
3 Plaintiff was therefore fully aware of Apple's petitions and has failed to demonstrate due diligence
4 or good cause for its untimely supplemental brief.

5 Accordingly, the Court DENIES the motion for leave to file a supplemental brief.

6 **IT IS SO ORDERED.**

7
8 Dated: October 14, 2019



LUCY H. KOH
United States District Judge

United States District Court
Northern District of California